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TIMOTHY M. WALSH  
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September 10, 1996

20261  
SEP 10 1996 - 3 54 PM  
INTERSTATE COMMERCE COMMISSION

Honorable Vernon A. Williams  
Secretary  
Surface Transportation Board  
Room 2214  
12th & Constitution Avenue, N.W.  
Washington, D.C. 20423

Dear Mr. Williams:

Enclosed for filing and recordation pursuant to 49 U.S.C. § 11301 are one original and three executed counterparts of the assignment of leases hereinafter described, a primary document. It relates to railroad equipment identified below.

Collateral Assignment and Agreement (Locomotive Leases), dated as of September 10, 1996 between (1) MK Rail Corporation, as Debtor/assignor and (2) BankAmerica Business Credit, Inc., as Secured Party/assignee.

The leases subject to this document are listed on Schedule 1 thereto, and the equipment subject to this document consists of the locomotives listed on Schedule 2 thereto. A copy of said Schedules 1 and 2 is attached as Attachment A hereto.

The names and addresses of the parties to the document are as follows:

Debtor/  
Assignor

MK Rail Corporation  
200 Reedsdale Street  
Pittsburgh, PA 15233

Secured Part/  
Assignee

BankAmerica Business Credit, Inc.  
231 South LaSalle  
16th Floor  
Chicago, Illinois 60697

Honorable Vernon A. Williams  
September 10, 1996  
Page 2

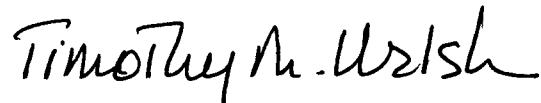
Please file and record the document with indexing under the foregoing names.

A fee of \$21.00 is enclosed for the recordation. Please return the original and any extra copies not needed by the Commission for recordation to the person presenting this letter.

A short summary of the document to appear in the index follows:

Collateral Assignment and Agreement (Locomotive Leases), dated as of September 10, 1996, between (1) MK Rail Corporation, as Debtor/assignor and (2) BankAmerica Business Credit, Inc., as Secured Party/assignee, covering all of the leases listed on Schedule 1 thereto and all of the locomotives listed on Schedule 2 thereto.

Very truly yours,



Timothy M. Walsh  
Attorney for MK Rail  
Corporation

Enclosures

**SCHEDULE 1**

**To Collateral Assignment and Agreement**

1. **Locomotive Lease Agreement dated as of April 1, 1994, by and between MK Rail Corporation and the Atchison, Topeka and Santa Fe Railway Company concerning the lease of ten (10) locomotives, as amended from time to time.**

## SCHEDULE 2

### To Collateral Assignment and Agreement

#### Description of Locomotives Mortgaged:

<u>Model</u>	<u>AAR Designation</u>	<u>Road Number</u>	<u>Serial Number</u>	<u>Identifying Mark*</u>
SD45	D126	ATSF 5356	32062	Santa Fe
F45	D126	ATSF 5978	34064	Santa Fe
F45	D126	ATSF 5979	34065	Santa Fe
F45	D126	ATSF 5980	34066	Santa Fe
F45	D126	ATSF 5986	34072	Santa Fe
F45	D126	ATSF 5987	34073	Santa Fe
F45	D126	ATSF 5988	34074	Santa Fe
F45	D126	ATSF 5989	34075	Santa Fe
F45	D126	ATSF 5983	34069	Santa Fe
F45	D126	ATSF 5985	34071	Santa Fe

Legend to be placed on each unit in one-inch letters:

Ownership subject to a security agreement filed with the Interstate Commerce Commission.

\* 1. Units currently identified with "Santa Fe" markings are, per AT&SF instructions, to have such markings painted out.

2. All Locomotives above are leased pursuant to the lease referenced to on Schedule 1.

**SURFACE TRANSPORTATION BOARD  
WASHINGTON, D.C. 20423-0001**

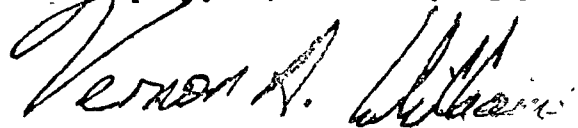
9/10/96

Timothy M. Walsh  
Steptoe & Johnson LLP  
1330 Connecticut Avenue, NW  
Washington, DC., 20038-1795

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 9/10/96 at 3:15PM, and assigned recordation number(s). 20261, 19582-C and 19583-E.

Sincerely yours,

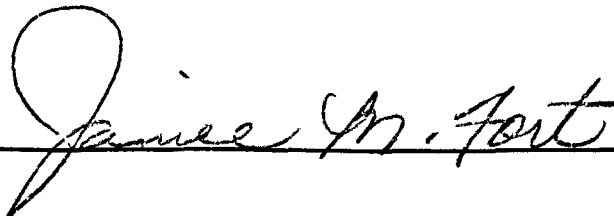


Vernon A. Williams  
Secretary

Enclosure(s)

\$ 63.00 The amount indicated at the left has been received in payment of a fee in connection with a document filed on the date shown. This receipt is issued for the amount paid and in no way indicates acknowledgment that the fee paid is correct. This is accepted subject to review of the document which has been assigned the transaction number corresponding to the one typed on this receipt. In the event of an error or any questions concerning this fee, you will receive a notification after the Commission has had an opportunity to examine your document.

Signature



SEP 10 1996 - 3:15 PM

INTERSTATE COMMERCE COMMISSION

**COLLATERAL ASSIGNMENT AND AGREEMENT  
(LOCOMOTIVE LEASES)**

**COLLATERAL ASSIGNMENT AND AGREEMENT (LOCOMOTIVE LEASES)**  
dated as of September 10, 1996 (this Collateral Assignment and Agreement, together with all amendments, modifications, supplements, renewals or replacements, thereof or thereto, including without limitation any Supplemental Collateral Assignment, as hereinafter defined, is referred to herein as this "Collateral Assignment") by and between MK RAIL CORPORATION, a Delaware corporation ("Debtor") having an office and place of business at 1200 Reedsdale Street, Pittsburgh, Pennsylvania 15233 and BANKAMERICA BUSINESS CREDIT, INC., a Delaware corporation ("BABC"), having an office and place of business at 231 South LaSalle Street, 16th Floor, Chicago, Illinois 60697, individually and as agent (in such capacity, the "Agent") for the Lenders (as defined below).

**WITNESSETH:**

WHEREAS, pursuant to that certain Amended and Restated Loan and Security Agreement (the Amended and Restated Loan and Security Agreement, and all extensions, renewals, amendments, substitutions or replacements thereto, referred to herein as the "Credit Agreement") by and among the Debtor, Touchstone, Inc., a Tennessee corporation ("TI"), MK Engine Systems Company, Inc., a New York corporation ("MKES"), Motor Coils Manufacturing Co., a Pennsylvania corporation ("MCMC"), Power Parts Company, a Nevada corporation ("PPC"), Power Parts Sign Co., an Illinois corporation ("PPS"), and Clark Industries, Inc., an Illinois corporation ("CII"), as the borrowers (the Debtor, TI, MKES, MCMC, PPC, PPS and CII, are herein referred to individually as a "Loan Party", and collectively as the "Loan Parties"), the Agent and the financial institutions named therein (herein referred to individually as a "Lender" and collectively as the Lenders"), agreed to make available to the Loan Parties, upon the terms and conditions set forth in the Credit Agreement, a revolving credit facility in an amount not to exceed SIXTY-SEVEN MILLION DOLLARS (\$67,000,000.00) and a term loan of EIGHT MILLION DOLLARS (\$8,000,000.00);

WHEREAS, in compliance with the provisions of the Credit Agreement, and in order to provide further security for the Obligations (as defined in the Credit Agreement) and certain other obligations and liabilities of the Loan Parties to the Lenders and the Agent and as an inducement to the Lenders and the Agent to provide the credit accommodations set forth in the Credit Agreement and the other Loan Documents, the Debtor has agreed to assign all its right, title and interest in and relating to all lease agreements entered into by Debtor providing for the lease of any locomotive held by Debtor to any third party intended for use in any manner relating to interstate commerce, excepting, however, all lease agreements entered into by Debtor providing for the lease of any locomotive owned by any party other than Debtor pursuant to any

sale/leaseback agreement entered into prior to the date hereof, but otherwise including without limitation those lease agreements described on Schedule 1 hereto together with those lease agreements described from time to time on schedules to Supplemental Collateral Assignments (as such term is defined below) (collectively referred to herein as the "Assigned Agreements"), which Assigned Agreements initially concern the lease of 10 locomotives specifically identified on Schedule 2 hereto and incorporated herein by reference, and will concern the lease of locomotives specifically identified from time to time on schedules to Supplemental Collateral Assignments;

WHEREAS, Debtor has good and marketable right, title and interest in and to all the property which is subject to this Collateral Assignment; and

WHEREAS, each of the terms used herein (including the preamble and these recitals to this Collateral Assignment) as a defined term which is not defined herein but which is defined in the Credit Agreement shall have the meaning herein ascribed to such term in the Credit Agreement.

NOW, THEREFORE, in consideration of the premises (each of which is hereby incorporated by reference) and with the intent of being legally bound hereby, Debtor and the Agent hereby agree as follows:

### **AGREEMENTS**

1. **Collateral Assignment.** For the purpose of securing the payment and performance of the following (individually and collectively, the "Secured Obligations"):

(a) the Obligations (as defined in the Credit Agreement) of the Debtor and the other Loan Parties including but not limited to the indebtedness, liabilities and obligations of Debtor and the other the Loan Parties evidenced by and set forth in:

(i) the Letters of Credit, including, but not limited to, the payment of all accrued and unpaid Letter of Credit Fees payable in connection with such Letters of Credit in accordance with the terms of the Credit Agreement, and the reimbursement of any sums advanced by any Lender in connection with any drawing presented under a Letter of Credit together with interest thereon;

(ii) the Credit Agreement, including, but not limited to, the payment of all accrued and unpaid fees thereunder, and reimbursement of any sums advanced by the Agent or a Lender or which may otherwise be payable to, or recoverable by, the Agent or a Lender pursuant to the provisions of the Credit Agreement, the terms and provisions of the Credit Agreement being specifically incorporated herein by reference thereto;

(iii) this Collateral Assignment, including, but not limited to, reimbursement of any sums advanced by the Agent or a Lender or which may otherwise become payable to, or recoverable by, the Agent or a Lender pursuant to the provisions of this Collateral Assignment;

(iv) the other Loan Documents, including, but not limited to, the payment of all accrued and unpaid fees thereunder, and reimbursement of any sums advanced by the Agent or a Lender or which may otherwise be payable to, or recoverable by, the Agent or a Lender pursuant to the other Loan Documents, as one or more may be amended, modified or supplemented from time to time (the other Loan Documents, as one or more may be amended, modified or supplemented from time to time are hereinafter referred to as the "Other Credit Documents"), the terms and provisions of the Other Credit Documents being specifically incorporated herein by reference thereto; and

(b) all other liabilities, obligations, covenants, duties and Debt of the Loan Parties to the Agent and the Lenders of any and every kind and nature, however evidenced, and whether arising under this Collateral Assignment, the Credit Agreement or the Other Credit Documents, whether heretofore, now or hereafter owing, arising, due or payable from the Loan Parties to the Agent or the Lenders;

Debtor hereby assigns and pledges to the Agent, for the benefit of the Agent and the Lenders, and their respective successors and assigns, and grants to the Agent, for the benefit of the Agent and the Lenders, and their respective successors and assigns, a perfected and continuing lien and security interest, prior to all other Liens, on and in all of Debtor's right, title and interest, powers, privileges, and other benefits under the Assigned Agreements and all amendments thereto, modifications thereof and substitutions therefor, including, without limitation, the immediate right to receive and collect all income, revenue, payments, proceeds, profits and other sums payable to or receivable by Debtor or to which Debtor is or shall become entitled thereunder, whether payable in cash or otherwise, and the right to make all waivers and agreements, to give all consents and releases, to take all action upon the happening of any default giving rise to a right in favor of Debtor, under any of the Assigned Agreements, and to do any and all other things whatsoever which Debtor is or may become entitled to do under any of the Assigned Agreements (the foregoing collectively the "Assigned Rights"). In furtherance of the foregoing assignment, Debtor hereby irrevocably authorizes and empowers the Agent in its own name, or in the name of its nominee, or in the name of, or as attorney-in-fact for, Debtor, to ask, demand, sue for, collect and receive any and all payments to which Debtor is or may become entitled under any of the Assigned Agreements, and to enforce compliance by any party, to any Assigned Agreements by which that party is bound, with all or any of the terms and provisions of such Assigned Agreements.

**2. Liability of Debtor.** This Collateral Assignment is executed only as security for the Secured Obligations of Debtor under and pursuant to the Credit Agreement and all other Loan Documents and, therefore, the execution and delivery of this Collateral

Assignment shall not subject the Agent or any Lender, or transfer or pass to the Agent or any Lender, or in any way affect or modify, the liability of Debtor under any or all of the Assigned Agreements; it being understood and agreed that notwithstanding this Collateral Assignment or any subsequent assignment, all of the obligations of Debtor to each and every other party under each and every one of the Assigned Agreements shall be and remain enforceable by such other party, its successors and assigns, against, but only against, Debtor or persons other than the Agent and the Lenders, and their respective successors and assigns.

**3. Representations and Warranties of Debtor.** Debtor represents and warrants to the Agent (for the benefit of the Agent and the Lenders) that:

(a) Debtor is a corporation duly organized and existing under the laws of the State of Delaware and is qualified to do business in every jurisdiction where the nature of its business requires it to be so qualified and where failure so to qualify might materially affect its business or assets, and has all requisite power and authority, corporate and otherwise, to conduct its business and to own its property.

(b) the execution, delivery and performance of this Collateral Assignment does not require the consent or approval of any governmental authority and are not in contravention of, or in conflict with, any law, rule, regulation or order by which Debtor is bound;

(c) Debtor has, and has duly exercised, all requisite right, power and authority to enter into this Collateral Assignment, and to assign and pledge, and to grant liens and security interest upon and in, the Assigned Rights for the purposes set forth in this Collateral Assignment, and to carry out the transactions contemplated by this Collateral Assignment, and this Collateral Assignment constitutes a legal, valid and binding obligation of Debtor enforceable against Debtor in accordance with its terms;

(d) the execution and delivery of this Collateral Assignment are not, and the performance of this Collateral Assignment will not be, in contravention of, or in conflict with, any agreement, indenture or undertaking to which Debtor is a party or by which Debtor or any of its property are or may be bound or affected, subject, however, to the terms of the Assigned Agreements and applicable law, and do not and will not cause any security interest, lien or other encumbrance to be created or imposed or accelerated upon in connection with any such property, and neither the value of the Assigned Rights upon disposition thereof, nor the ability to freely transfer the Assigned Rights, is limited by any licenses, franchises, management agreement, leases, subleases or other general intangible or contract rights, to which Debtor is a party or which is otherwise applicable to Debtor or the Assigned Rights, except an Assigned Agreement;

(e) except for the security interest of the Agent (on behalf of the Agent and the Lenders) therein, (i), Debtor has not previously assigned, transferred, conveyed, sold, pledged or hypothecated any part of the Assigned Agreements; and (ii) Debtor is

the owner of all the Assigned Rights, free from any Liens or other right, title or interest of any other Person and, at its expense, Debtor shall generally warrant title to the Assigned Rights, and shall defend the Assigned Rights, and the right, title and interest of the Agent (for the benefit of the Agent and the Lenders) therein and thereto, against all claims and demands of any and all Persons whomsoever; Debtor shall not grant, create, incur or permit to exist any Lien on or in any of the Assigned Rights, other than the liens and security interests granted hereby or pursuant hereto; Debtor shall not permit any of the Assigned Rights to be levied upon under any legal process;

(f) except for the filing of this Collateral Assignment with the Surface Transportation Board (the "STB") pursuant to Section 11303 of the Interstate Commerce Act, as amended by the ICC Termination Act of 1995 and codified at 49 U.S.C. §10101 et. seq. (1996) (the "Act") and the filing of the applicable Uniform Commercial Code financing statements with the Secretary of State of the Commonwealth of Pennsylvania and the office of the Prothonotary of Allegheny County, Pennsylvania, no filing, recording or registration of any financing statement or other document or instrument is or will be necessary or advisable in order to create in favor of the Agent for the benefit of the Lenders and the Agent a valid prior perfected security interest in the Assigned Rights;

(g) there are no actions, suits or proceedings pending or, to the best knowledge of Debtor, threatened before any court or by or before any other federal, state or local governmental or public commission board, authority or agency, or any arbitrator, domestic or foreign, which if adversely determined could reasonably be expected to have a materially adverse effect on Debtor's ability to perform its obligations under this Collateral Assignment, or which call into question the validity of this Collateral Assignment;

(h) all licenses, permits, rights of way and other authorizations, consents and other filings required by law to be obtained or made in order to permit the transfer of the Assigned Rights hereunder have been obtained or made, where the failure to obtain any such license, permit, authorization or consent or make any such filing might have a material adverse effect on Debtor's ability to perform its obligations under this Collateral Assignment;

(i) there is no financing statement (or other evidence of lien or security interest including without limitation filings with the Surface Transportation Board) now on file in any public office covering any of the Assigned Agreements in which Debtor is named or signs as debtor or assignor;

(j) the Assigned Agreements are presently in full force and effect and binding upon all the parties thereto. No defaults or breaches, on the part of Debtor, or to the knowledge of Debtor on the part of any other Person, have occurred in such agreements, including, but not limited to, such defaults or breaches which would result

in the reduction or termination of Debtor's interest in or the termination of the Assigned Agreements. Debtor has duly and punctually performed all and singular any and all material terms, covenants, conditions and warranties contained in the Assigned Agreements on its part to be kept, observed and performed. The Assigned Agreements described on Schedule 1 reflect the entire agreements governing the relationship between the parties thereto and no other written or oral agreements, amendments or modifications exist with regard to such Assigned Agreements and the Assigned Agreements provided to the Agent are true and correct copies of all agreements presently existing in connection with the relationships described in the Assigned Agreements;

(k) except as previously disclosed to Agent in writing, any of the amounts under the Assigned Agreements to which Debtor is entitled from and after the date of this Collateral Assignment has not been collected by Debtor and payment of such amounts has not otherwise been anticipated, waived, released, discounted, set off or otherwise discharged or compromised;

(l) Debtor is not in default under the provisions of any of the Assigned Agreements as of the date of this Collateral Assignment; and

(m) Debtor's principal place of business and principal executive office are located at the address set forth in the opening paragraph of this Collateral Assignment.

**4. Performance, Amendments, Modifications and Waivers of Assigned Agreements.** To protect the security afforded by this Collateral Assignment, Debtor agrees as follows:

(a) Debtor will faithfully abide by, perform and discharge each and every obligation, covenant, condition, duty and agreement under each of the Assigned Agreements;

(b) Without the written consent of the Agent, Debtor will not:

(i) anticipate any revenue due it under any Assigned Agreements;

(ii) waive, excuse, condone, forgive or in any manner release or discharge any other party to any Assigned Agreements from the obligations, covenants, conditions, duties and agreements in any such agreement contained, if the consequences of such act would be to materially adversely affect the ability of Agent to collect (for the benefit of the Agent and the Lenders) the accounts receivable arising thereunder or otherwise adversely affect the Agent's interests therein; or

(iii) amend, modify or otherwise change or terminate (other than in accordance with its terms) any Assigned Agreements, if the consequences of such an act would be to materially adversely affect Debtor's condition, financial or otherwise;

(c) At Debtor's sole cost and expense, Debtor will appear in and defend any action or proceeding arising under, growing out of or in any manner connected with the obligations, covenants, conditions, duties, agreements or liabilities of Debtor under any of the Assigned Agreements;

(d) Should Debtor fail to make any payment, do any act or refrain from any act which this Collateral Assignment requires Debtor to make, do or refrain from, respectively, then the Agent may, but shall have no obligation to (and shall not thereby release Debtor from any obligation hereunder) make, do or prevent the same in such manner and to such extent as the Agent may deem necessary or advisable to protect the security provided hereby, which rights of the Agent shall specifically include, without limiting the Agent's general powers herein granted, the right to appear in and defend any action or proceeding purporting to affect the security hereof and the rights or powers of Agent hereunder, and also the right to perform and discharge each and every one, or any one or more, of the obligations, covenants, conditions, duties and agreements of Debtor contained in any one or more of the Assigned Agreements; and in exercising any such powers, the Agent may pay necessary or advisable costs and expenses, employ counsel and incur and pay reasonable attorneys, fees, and Debtor will reimburse the Agent for such costs, expenses and fees provided that the recourse of the Agent against the Debtor for such payments shall be limited to the collateral granted to Agent by Debtor.

(e) Debtor will mark each Assigned Agreement with a conspicuous legend as follows: "All right, title and interest in and to this Lease Agreement and the locomotives covered hereby on the part of MK Rail Corporation has been assigned to and is subject to a security interest in favor of BankAmerica Business Credit, Inc., as agent on behalf of certain lenders, under the Collateral Assignment and Agreement dated as of September 10, 1996 between MK Rail Corporation and BankAmerica Business Credit, Inc."

**5. Power of Attorney.** Subject to the provisions of Section 11 hereof, Debtor does hereby constitute Agent its true and lawful attorney, irrevocably, with full power, to ask, require, demand, receive, compound and give acquittance for each and every payment due or to become due, or any such payment or payments, under or arising out of any of the Assigned Agreements to which Debtor is or may become entitled, to enforce compliance by each or any other party with each or any term or provision of any one or more of the Assigned Agreements, to endorse each and every check or other instrument or order in connection therewith, or any one or more of them, and to file any claim or claims, take any action or actions or institute any proceeding or proceedings which the Agent may deem to be necessary or advisable.

6. **Termination.** Upon the full discharge and satisfaction of each and every one of the Secured Obligations under and pursuant to the Credit Agreement, this Collateral Assignment, the Other Credit Documents and the other documents, instruments and agreements evidencing the Secured Obligations, including without limitation the termination of the Commitment, all rights herein assigned to the Agent shall terminate, and all estate, right, title and interest of the Agent in and to each and every one of the Assigned Agreements shall revert to Debtor.

7. **Supplemental Collateral Assignments.** Debtor promptly shall notify the Agent after Debtor enters into any lease agreement with any third party providing for the lease of any locomotive or locomotives held by Debtor where such locomotive or locomotives are intended for use by such third party in a manner relating to interstate commerce (each such lease agreement, an "Additional Assigned Agreement"). Debtor shall promptly (i) deliver to Agent a copy of such Additional Assigned Agreement and (ii) execute and deliver a supplement to this Collateral Assignment, substantially in the form of Exhibit "A" attached hereto and made a part hereof, with appropriate insertions therein (each such supplement, a "Supplemental Collateral Assignment") and (iii) cause the legend referred to in Section 4(e) hereof to be affixed to the Additional Assigned Agreement.

8. **Lock Box Agreements.** Pursuant to the terms of the Credit Agreement, Debtor is on the date hereof establishing a lockbox arrangement with the Agent and has executed and delivered to Agent one or more lockbox agreements (collectively, the "Lockbox Agreement"), each in form and substance satisfactory to Agent and its counsel. Debtor agrees (i) to promptly notify and direct all lessees of Assigned Agreements (each, a "Lessee", collectively, the "Lessees") to remit all payments due under an Assigned Agreement directly to the lockbox or lockboxes established under the Lockbox Agreement and (ii) upon the occurrence of a Default or an Event of Default and the request of the Agent, to promptly notify all Lessees of the assignment and pledge to the Agent (for the benefit of the Agent and the Lenders) of, and the grant to the Agent (for the benefit of the Agent and the Lenders) of liens and security interests upon and in, the Assigned Rights. To the extent that any law or custom or any contract or agreement with any Lessee requires notice to or the approval of such Lessee in order to perfect such assignment of and security interest in the Assigned Rights, the Debtor agrees to give such notice or obtain such approval promptly. If the Agent learns that the Debtor has failed to give such notice or direction to any of the Lessees, then the Agent may itself so notify the Lessees (or any of them). This Collateral Assignment shall be sufficient evidence of such right and the Lessees may rely hereon and shall be under no obligation to see to the application of such moneys or other property by the Agent. The Agent is, and its duly authorized agents are, hereby authorized by the Debtor to endorse for and on the Debtor's behalf and deposit all drafts and checks payable to the Debtor in the lockbox established pursuant to the Lockbox Agreement.

All checks, drafts, acceptances, notes, cash and other forms of payment received from Lessees in payment on account of Assigned Agreements and transmitted to the lockbox established pursuant to the Lockbox Agreement or otherwise to the Agent will be deposited in a cash collateral account opened and maintained pursuant to the Lockbox Agreement. The

Debtor acknowledges and agrees that the cash collateral account will be maintained for the convenience and benefit of the Agent (for the benefit of the Agent and the Lenders) and that the Debtor does not, and shall not, have any rights or interest in the cash collateral account or the lockbox account established pursuant to the Lockbox Agreement, or any credits thereto or proceeds thereof, except as set forth in the Lockbox Agreement and the Credit Agreement.

9. **Further Assurances.** Debtor will, from time to time, do and perform any other act or acts and will execute, acknowledge, deliver and file, register, record and deposit (and will refile, reregister, rerecord, and redeposit whenever required) any and all further instruments required by law or requested by Agent in order to confirm, or further assure, the interest of Agent hereunder.

10. **Notices.** Debtor shall cause a copy of each and every notice or communication received from any other party to any Assigned Agreements, notifying Debtor of any default, event of default, breach or other violation, on the part of Debtor under any of the Assigned Agreements, to be promptly delivered to the Agent in the manner and at the place provided for in the Credit Agreement for the giving of notices and communications thereunder, or at such other address or in such other manner as Agent shall designate.

11. **Enforcement Upon Default.** The Agent hereby agrees with Debtor that, so long as both (a) no Default shall exist under or with respect to the Credit Agreement and (b) Debtor shall not be in default of any of its obligations, covenants, agreements or duties hereunder, the Agent will not exercise or enforce, or seek to exercise or enforce, or avail itself of, any of the rights, powers, privileges, authorizations or benefits assigned or transferred to Agent (for the benefit of the Agent and the Lenders) by Debtor under, pursuant to or by this Collateral Assignment.

12. **Lessee Consent and Acknowledgment.** Debtor shall obtain from each Lessee with respect to each Assigned Agreement existing on the date hereof which by its terms requires the consent of such Lessee to an assignment by Debtor as lessor, an agreement, in writing and executed and delivered by such Lessee in favor of the Agent (on behalf of the Agent and the Lenders), wherein such Lessee (i) consents to the assignment by Debtor of its rights in such Assigned Agreement to the Agent (on behalf of the Agent and the Lenders); (ii) agrees to give to the Agent all notices required to be given by such Lessee to Debtor under such Assigned Agreement; (iii) acknowledges the Agent's right to succeed to all of Debtor's interest under such Assigned Agreement upon the Agent's exercise of its rights under this Collateral Assignment or otherwise; and (iv) agrees to be bound to the Agent under all the terms and conditions of such Assigned Agreement upon such succession by the Agent, with the same force and effect as if the Agent were the lessor under such Assigned Agreement, and to attorn to the Agent as its lessor, said attornment to be effective and self-operative immediately upon such succession, without any further action required. From and after the date hereof, Debtor will not enter into any lease agreement providing for the lease of any locomotive held by Debtor to any third party which prohibits the assignment of such lease by Debtor without the Lessee's consent, unless a

Lessee consent and acknowledgement of the type referred to in the previous sentence is delivered to the Agent.

**13. Liability of Agent.** The Debtor agrees that neither the Agent nor any of its agents, designees or attorneys-in-fact will be liable for any acts of commission or omission, or for any error of judgment or mistake of fact or law in respect to the exercise of the powers of attorney granted under this Collateral Assignment, except that the Agent shall be liable for the acts of commission or omission of the Agent, its agents, designees and attorneys-in-fact that constitute recklessness or willful misconduct. The powers of attorney granted under this Collateral Assignment are coupled with an interest and shall be irrevocable until all Secured Obligations are paid and performed in full and until the Commitment is terminated.

**14. Waiver.** No waiver by the Agent of any default shall operate as a waiver of any other default or of the same default on a future occasion. No failure or delay on the part of the Agent in the exercise of any power, remedy or right shall operate as a waiver thereof, nor shall any single or partial exercise of any power, remedy or right preclude other or further exercise thereof, or the exercise of any other power, remedy or right. The Agent may assert any of its powers, rights or remedies successively, concurrently, independently or cumulatively and all such powers, rights and remedies shall be non-exclusive.

**15. Notification of Sale.** Any requirement of law as to reasonable notification of the time and place of any public sale, or of the time after which any private sale or other intended disposition of the Assigned Agreements is to be made, shall be met by giving the Debtor at least five (5) days' prior written notice of the time and place of any such public sale or the time after which any such private sale or any other intended disposition is to be made.

**16. Exercise of Rights on Other Security.** The Agent or any Lender may have or in the future may hold other security and/or guaranties to secure all or any part of the Secured Obligations, but it is specifically understood and agreed that neither the execution and delivery of this Collateral Assignment nor the holding of any other security and/or guaranty shall at any time or in any wise operate to prevent or hinder the Agent or any Lender from resorting first to such other security and/or guaranty or first to the Assigned Rights, or first from time to time to both; and the Agent (on behalf of the Agent and the Lenders) may from time to time as the Agent sees fit, in the Agent's sole and uncontrolled discretion, resort to all or any part of the Assigned Rights without resorting to all or any other security and/or guaranty securing such Secured Obligations, or to all or any part of any other security and/or guaranty securing the Secured Obligations without resorting to all or any part of the Assigned Rights, and such action on the Agent's part shall not in any wise be considered as a waiver of any of the benefits or rights of the Agent relating to the Assigned Rights or such other security and/or guaranties.

**17. Successors and Assigns.** This Collateral Assignment shall be binding upon the Debtor and the successors and assigns of the Debtor, and shall inure to the benefit of the Agent and the Lenders, and their respective successors and assigns.

18. Waiver of Demand. DEMAND, PRESENTMENT, PROTEST AND NOTICE OF DEMAND, PRESENTMENT, PROTEST AND NONPAYMENT ARE HEREBY WAIVED BY DEBTOR. DEBTOR ALSO WAIVES THE BENEFIT OF ALL VALUATION, APPRAISAL AND EXEMPTION LAWS.

19. Waiver of Notice. IN THE EVENT OF THE OCCURRENCE OF AN EVENT OF A DEFAULT, DEBTOR HEREBY WAIVES ALL RIGHTS TO NOTICE AND HEARING OF ANY KIND PRIOR TO THE EXERCISE BY AGENT OF ITS RIGHTS TO REPOSSESS THE ASSIGNED RIGHTS WITHOUT JUDICIAL PROCESS OR TO REPLEVY, ATTACH OR LEVY UPON THE ASSIGNED RIGHTS WITHOUT PRIOR NOTICE OR HEARING. DEBTOR ACKNOWLEDGES THAT IT HAS BEEN ADVISED BY COUNSEL OF ITS CHOICE WITH RESPECT TO THIS TRANSACTION AND THIS COLLATERAL ASSIGNMENT.

20. Severability. The illegality or unenforceability of any provision of this Collateral Assignment or any instrument or agreement required hereunder shall not in any way affect or impair the legality or enforceability of the remaining provisions of this Collateral Assignment or any instrument or agreement required hereunder.

21. Governing Law. THIS COLLATERAL ASSIGNMENT SHALL BE INTERPRETED AND THE RIGHTS AND LIABILITIES OF THE PARTIES HERETO DETERMINED IN ACCORDANCE WITH THE INTERNAL LAWS (AS OPPOSED TO THE CONFLICT OF LAWS PROVISIONS, PROVIDED THAT PERFECTION ISSUES WITH RESPECT TO ARTICLE 9 OF THE UCC MAY GIVE EFFECT TO APPLICABLE CHOICE OR CONFLICT OF LAW RULES SET FORTH IN ARTICLE 9 OF THE UCC) OF THE STATE OF ILLINOIS; PROVIDED THAT THE AGENT SHALL RETAIN ALL RIGHTS ARISING UNDER FEDERAL LAW.

22. Counterparts. This Collateral Assignment may be executed in any number of counterparts, and by the Agent and Debtor in separate counterparts, each of which shall be an original, but all of which shall together constitute one and the same agreement.

23. Final Agreement. This Collateral Assignment and the other Loan Documents are intended by the Agent and Debtor to be the final, complete, and exclusive expression of the agreement between them. This Collateral Assignment supersedes any and all prior oral or written agreements relating to the subject matter hereof, except that this Collateral Assignment shall be in addition to and not in replacement of the Collateral Assignment and Agreement dated as of August 30, 1995 (as amended) which was recorded August 31, 1995 and assigned ICC Recordation Number 19582. No modification, rescission, waiver, release, or amendment of any provision of this Collateral Assignment shall be made, except by a written agreement signed by a duly authorized officer of each party hereto.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have caused this Collateral Assignment and Agreement to be executed with intent to be legally bound hereby, all as of the date first above written.

DEBTOR:

MK RAIL CORPORATION, a Delaware corporation

By: Thomas P. Lyons  
Name: Thomas P. Lyons  
Title: Treasurer

SECURED PARTY:

BANKAMERICA BUSINESS CREDIT, INC.,  
individually and as Agent for the Lenders

By: Thomas G. Sullivan  
Name: Thomas G. Sullivan  
Title: V.P.

## **SCHEDULE 1**

### **To Collateral Assignment and Agreement**

1. Locomotive Lease Agreement dated as of April 1, 1994, by and between MK Rail Corporation and the Atchison, Topeka and Santa Fe Railway Company concerning the lease of ten (10) locomotives, as amended from time to time.

## SCHEDULE 2

### To Collateral Assignment and Agreement

#### Description of Locomotives Mortgaged:

<u>Model</u>	<u>AAR Designation</u>	<u>Road Number</u>	<u>Serial Number</u>	<u>Identifying Mark*</u>
SD45 -	D126	ATSF 5356	32062	Santa Fe
F45	D126	ATSF 5978	34064	Santa Fe
F45	D126	ATSF 5979	34065	Santa Fe
F45	D126	ATSF 5980	34066	Santa Fe
F45	D126	ATSF 5986	34072	Santa Fe
F45	D126	ATSF 5987	34073	Santa Fe
F45	D126	ATSF 5988	34074	Santa Fe
F45	D126	ATSF 5989	34075	Santa Fe
F45	D126	ATSF 5983	34069	Santa Fe
F45	D126	ATSF 5985	34071	Santa Fe

Legend to be placed on each unit in one-inch letters:

Ownership subject to a security agreement filed with the Interstate Commerce Commission.

\* 1. Units currently identified with "Santa Fe" markings are, per AT&SF instructions, to have such markings painted out.

2. All Locomotives above are leased pursuant to the lease referenced to on Schedule 1.

CERTIFICATE OF ACKNOWLEDGMENTS

STATE OF ILLINOIS     )  
                                      ) SS:  
COUNTY OF COOK        )

On this 9 day of September, 1996, before me, a Notary Public, the undersigned officer, personally appeared Thomas P. Lyons, who acknowledged himself/herself to be the Treasurer of MK RAIL CORPORATION, a Delaware corporation, and that he/she as such Treasurer, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the Corporation by himself/herself as Treasurer.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.



Seka Jajic Kaplarevic  
Notary Public

STATE OF ILLINOIS     )  
                                      ) SS:  
COUNTY OF COOK        )

On this 9 day of ~~August~~<sup>September</sup>, 1996, before me, a Notary Public, the undersigned officer, personally appeared Thomas G. Sullivan who acknowledged himself/herself to be the Vice President of BANKAMERICA BUSINESS CREDIT, INC., a Delaware corporation, and that he/she as such Vice President, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the Corporation, as agent as above described, by himself/herself as Vice President.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.



Seka Jajic Kaplarevic  
Notary Public

STATE OF ILLINOIS       )  
                                      ) SS:  
COUNTY OF COOK        )

On this 9 day of September, 1996, before me personally appeared Thomas P. Lyons, to me personally known, who being by me duly sworn, say that he/she is Treasurer of MK Rail Corporation, that said instrument was signed on behalf of said corporation on such day by authority of its Board of Directors, and he/she acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Selma Jajic Kaplarevic  
Notary Public

[NOTARIAL SEAL] "OFFICIAL SEAL"  
Seka Jajic Kaplarevic  
Notary Public, State of Illinois  
My Commission Expires 5/14/97

My commission expires: \_\_\_\_\_

**EXHIBIT "A" TO COLLATERAL ASSIGNMENT  
AND AGREEMENT**

**SUPPLEMENT NO. \_\_ TO COLLATERAL  
ASSIGNMENT AND AGREEMENT**

SUPPLEMENT NO. \_\_ TO COLLATERAL ASSIGNMENT AND AGREEMENT dated as of \_\_\_\_\_, 199\_\_ (this "Supplemental Collateral Assignment") to the Collateral Assignment and Agreement dated as of September \_\_, 1996 (as amended, supplemented or otherwise modified from time to time prior to the date hereof, the "Initial Collateral Assignment"), between MK RAIL CORPORATION, a Delaware corporation (the "Debtor") and BANKAMERICA BUSINESS CREDIT, INC., a Delaware corporation, individually and as agent (in such capacity, the "Agent") for the Lenders (as such term is defined in the Initial Collateral Assignment).

**R E C I T A L S:**

WHEREAS, all undefined terms used herein shall have the respective meanings set forth therefor in the Initial Collateral Assignment; and

WHEREAS, subject to the terms and provisions of the Initial Collateral Assignment, Debtor agreed to execute and deliver from time to time Supplemental Collateral Assignments substantially in the form hereof with respect to lease agreements relating to locomotives held by Debtor for lease to third parties and not previously described on a schedule to the Initial Collateral Assignment; and

WHEREAS, Debtor is the owner of \_\_ locomotives (such locomotives as described in more detail on Supplemental Schedule 2 attached hereto and made a part hereof) which Debtor has leased, or intends to lease, pursuant to one or more lease agreements (such lease agreements, as described in more detail on Supplemental Schedule 1 attached hereto and made a part hereof, are herein referred to as the "Additional Assigned Agreements"); and

WHEREAS, Debtor desires to execute and deliver this Supplemental Collateral Assignment for the purpose of describing and subjecting the Additional Assigned Agreements to the lien of the Initial Collateral Assignment in favor of the Agent (on behalf of the Agent and the Lenders).

NOW THEREFORE, in consideration of the premises, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. Schedule 1 to the Initial Collateral Assignment is hereby supplemented by adding thereto as of \_\_\_\_\_, 199\_\_ the Additional Assigned Agreements described on Supplemental Schedule 1 hereto. Schedule 2 to the Initial Collateral Assignment is hereby supplemented to include the locomotive identification information set forth on Supplemental Schedule 2 hereto.

2. Effective on the date hereof, Debtor's right, title and interest in and to (i) the Additional Assigned Agreements described on Supplemental Schedule 1 attached hereto, (ii) all rents, revenues, issues, profits and proceeds arising from the sale, lease, license, encumbrance, collection or any other temporary or permanent disposition or encumbrance of the collateral listed in item (i) of this Section 2 (or any part thereof) or any interest therein, (iii) all products, substitutions, renewals and improvements to, of or for any of the collateral listed in items (i) through (ii) of this Section 2, and (iv) all proceeds (including any claims or insurance thereunder) of or for any of the collateral listed in items (i) through (iii) of this Section 2 are deemed included in the Assigned Agreements and are subjected to the lien, encumbrance and mortgage created by the Collateral Assignment.

3. This Supplemental Collateral Assignment shall be construed in connection with and as part of the Initial Collateral Assignment; and the Initial Collateral Assignment is hereby modified to include this Supplemental Collateral Assignment, and all terms, conditions, representations, warranties, covenants and agreements set forth therein, except as herein modified, are hereby confirmed and ratified (including without limitations the representations and warranties of Debtor set forth in Section 3 of the Initial Collateral Assignment) and shall remain in full force and effect, except that such terms, conditions, representations, warranties, covenants and agreements shall be deemed to extend to and include this Supplemental Collateral Assignment. From this date any references to the "Collateral Assignment" and "Assigned Agreement(s)" shall be deemed to be references to such terms as amended or supplemented in connection with this Supplemental Collateral Assignment.

**4. THIS SUPPLEMENTAL COLLATERAL ASSIGNMENT SHALL BE INTERPRETED AND THE RIGHTS AND LIABILITIES OF THE PARTIES HERETO DETERMINED IN ACCORDANCE WITH THE INTERNAL LAWS (AS OPPOSED TO THE CONFLICT OF LAWS PROVISIONS, PROVIDED THAT PERFECTION ISSUES WITH RESPECT TO ARTICLE 9 OF THE UCC MAY GIVE EFFECT TO APPLICABLE CHOICE OR CONFLICT OF LAW RULES SET FORTH IN ARTICLE 9 OF THE UCC) OF THE STATE OF ILLINOIS; PROVIDED THAT THE AGENT SHALL RETAIN ALL RIGHTS ARISING UNDER FEDERAL LAW.**

5. This Supplemental Collateral Assignment may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which shall constitute together but one and the same Supplemental Collateral Assignment.

IN WITNESS WHEREOF, each of the parties hereto has caused this Supplement No. \_\_\_ to Collateral Assignment and Agreement to be duly executed and delivered as of the date and year first above written.

MORTGAGOR:

MK RAIL CORPORATION, a  
Delaware corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Agreed and Accepted this \_\_\_ day  
of \_\_\_\_\_, 199\_\_:

BANKAMERICA BUSINESS CREDIT, INC.,  
individually and as Agent for the Lenders

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Supplemental Schedule 1 to Supplement No. \_\_\_\_\_  
To Collateral Assignment and Agreement

ADDITIONAL ASSIGNED AGREEMENTS

Supplemental Schedule 2 to Supplement No.  
To Collateral Assignment and Agreement

Description of Locomotives (Units):

<u>Model</u>	<u>AAR</u> <u>Designation</u>	<u>Road Number</u>	<u>Serial</u> <u>Number</u>	<u>Identifying</u> <u>Mark</u>
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## CERTIFICATE OF ACKNOWLEDGMENTS

COMMONWEALTH OF PENNSYLVANIA )  
 ) SS:  
COUNTY OF ALLEGHENY )

On this \_\_\_\_\_ day of \_\_\_\_\_, 199\_, before me, a Notary Public, the undersigned officer, personally appeared \_\_\_\_\_, who acknowledged himself/herself to be the \_\_\_\_\_ of MK RAIL CORPORATION, a Delaware corporation, and that he/she as such \_\_\_\_\_, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the Corporation by himself/herself as \_\_\_\_\_.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

**Notary Public**

STATE OF ILLINOIS )  
 ) SS:  
COUNTY OF COOK )

On this \_\_\_\_\_ day of \_\_\_\_\_, 199\_, before me, a Notary Public, the undersigned officer, personally appeared \_\_\_\_\_ who acknowledged himself/herself to be the \_\_\_\_\_ of BANKAMERICA BUSINESS CREDIT, INC., a Delaware corporation, and that he/she as such \_\_\_\_\_, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the Corporation, as agent as above described, by himself/herself as \_\_\_\_\_.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

**Notary Public**